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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/613,890 | 07/03/2003 | Casimir R. Kiczek | 02-11 | 6893 |

7590 11/30/2005

Intellectual Property Department
Dura Automotive Systems, Inc.
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Rochester Hills, MI 48309

EXAMINER

JOHNSON, VICKY A

ART UNIT

PAPER NUMBER

3682

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/613,890 | Applicant(s) KICZEK ET AL. | |
| | Examiner Vicky A. Johnson | Art Unit 3682 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 12 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 21-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 5, 7 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "the slot" in line 2. There is insufficient antecedent basis for this limitation in the claim.

In claims 7 and 8 it is unclear how claim 7 can include the limitation of "including one of" and then claim 8 only further limits the second part of claim 7.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 6-15, and 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated Muhlock (US 3,975,972).

Muhlock discloses a pedal comprising in combination: a mounting bracket (14), an upper pedal arm (22) pivotally connected to the mounting bracket (see Fig 1), a lower pedal (32) arm being adjustable in position with respect to the upper pedal arm, a

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locking member (86, 64), a strand (116) connected to the lower pedal arm, and a biasing member (52).

Re claim 2, the locking member includes a gear (64) and pawl (86) to prevent movement of the lower pedal arm separate from the upper pedal arm in one condition and to permit movement of the lower pedal arm separate from the upper pedal arm in another condition (see Figs 6-8).

Re claim 3, a slot (64) and a pin (86) arrangement.

Re claim 4 the biasing member is selectively for the group of a torsion spring, a coil spring and an elastomeric member (see Fig 1).

Re claim 6, the strand is a cable (116); the cable is attached to an actuator (120).

Re claims 7 and 14 the actuator including a manually actuated cable adjuster (120).

Re claim 10, a slot pin arrangement (64,86) and the slot is one of elongated aperture, arcuate, "S" shaped, "C" shaped and non-linear (see Fig 1).

Re claim 12, the lock member is mounted on the pin (see Fig 1).

Re claim 13, the lock member includes a rotatable pawl (see Fig 1).

Re claim 22, the upper pedal arm has a slot and the lower pedal arm is connected to the pin (see Fig 1).

Re claim 23, the lock member includes a gear and a pawl, the pawl connected to the cable, and the gear connected to the upper pedal arm (see Fig 1).

Re claim 24, the pawl is biased to engage the gear and is rotatable to a disengaged position upon tensioning of the cable (see Figs 3 and 4).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 8 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muhlock (US 3,975,972) in view of Levine (US 6,820,895).

Muhlock discloses a device as described above, but does not disclose a motor driven actuator.

Levine discloses a cable operated pedal device having a motor (62).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Muhlock to include a motor driven actuator as taught by Levine in order to automatically adjust the position of the driver (col. 6 lines 42-58).

Response to Arguments

7. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vicky A. Johnson whose telephone number is (571) 272-7106. The examiner can normally be reached on Monday-Friday (7:00a-3:30p).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Bucci can be reached on (571) 272-7099. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Vicky A. Johnson 11/23/05
Examiner
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